

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JANE DOE, individually and on behalf of
all others similarly situated,

Plaintiff,

v.

NFL ENTERPRISES, LLC, *et al.*,

Defendants.

No. C 17-00496 WHA

**ORDER RE PLAINTIFF'S
MOTION TO PROCEED
UNDER PSEUDONYM**

INTRODUCTION

In this putative class action for antitrust violations, plaintiff moves for permission to proceed under a pseudonym. The motion is **DENIED**, subject to the last paragraph of this order.

STATEMENT

On January 31, plaintiff, a former cheerleader for the San Francisco 49ers, brought this action under the pseudonym Jane Doe. The complaint alleges the National Football League and its member clubs conspired to eliminate competition for recruiting cheerleaders and to keep cheerleaders' wages below market value (*e.g.*, Dkt. No. 1 at 3–4). On February 3, plaintiff filed the instant motion, claiming she “will be subject to harassment, injury, ridicule, or personal embarrassment if forced to maintain this action under her legal name” (Dkt. No. 5 at 2). Plaintiff's counsel also submitted a declaration stating that he had discussed the motion with defense counsel the same day and requested that defendants stipulate to the motion, but received no response to his request (Dkt. No. 5-1).

1 This case was assigned to the undersigned on February 16. As of this order, defense
2 counsel has neither appeared nor opposed plaintiff's motion.

3 ANALYSIS

4 In this circuit, parties may use pseudonyms in unusual cases when nondisclosure of the
5 party's identity is necessary "to protect a person from harassment, injury, ridicule or personal
6 embarrassment." *Does I thru XXIII v. Advanced Textile Corp.*, 214 F.3d 1058, 1067–68 (9th
7 Cir. 2000) (quoting *United States v. Doe*, 655 F.2d 920, 922 n.1 (9th Cir. 1981)). "[A] party
8 may preserve his or her anonymity in judicial proceedings in special circumstances when the
9 party's need for anonymity outweighs prejudice to the opposing party and the public's interest
10 in knowing the party's identity." *Id.* at 1068.

11 When a pseudonym is used "to shield the anonymous party from retaliation, the district
12 court should determine the need for anonymity" by evaluating (1) the severity of the threatened
13 harm, (2) the reasonableness of the anonymous party's fears, and (3) the anonymous party's
14 vulnerability to such retaliation. *Ibid.* "The court must also determine the precise prejudice at
15 each stage of the proceedings to the opposing party . . . whether proceedings may be structured
16 so as to mitigate that prejudice," and "whether the public's interest in the case would be best
17 served by requiring that the litigants reveal their identities." "[T]he balance between a party's
18 need for anonymity and the interests weighing in favor of open judicial proceedings may
19 change as the litigation progresses." *Id.* at 1069.

20 Here, plaintiff contends cheerleaders need anonymity "to prevent overzealous fans from
21 stalking or otherwise inappropriately contacting" them, and to protect them from "social
22 stigmatization" on account of their revealing uniforms. According to plaintiff, these concerns
23 are why all NFL cheerleaders appear "in public and on team websites" only with some degree
24 of anonymity (for example, the 49ers' website includes photographs of cheerleaders for only the
25 current year and does not reveal their last names). Additionally, plaintiff does not want her true
26 name to be associated with this lawsuit because "Former cheerleaders who have filed
27 complaints against the NFL and various NFL teams have been subject to vicious online attacks
28 and harassment, and even stalking" (Dkt. No. 5 at 3–4).

1 Plaintiff cites no actual threat of any harm against her *specifically*. Rather, she offers as
2 proof of her need for anonymity the declaration of Caitlin Yates, another former NFL
3 cheerleader who filed a class action against the NFL and the Oakland Raiders in 2014. Yates
4 claims the media attention on her case prompted fans to find her online — despite her suing
5 “under the relative anonymity of the name Caitlin Y.” — and call her “hurtful, demeaning and
6 profane names” (Dkt. No. 5-2). Plaintiff also offers the declaration of Jessica Doe, who “was
7 subject to constant harassment” and “stalked” during her time as a NFL cheerleader. Jessica
8 Doe recounts that one fan followed her, masturbated to her photograph and outside her house,
9 and made vulgar comments to her on numerous occasions. She also recalls being “grabbed
10 inappropriately by fans” and “called terrible, demeaning, and vulgar names” (Dkt. No. 5-3).

11 Notably, Yates, who describes retaliation directly linked to her role in a class action
12 against the NFL, suffered relatively unexceptional harassment, whereas Jessica Doe, who
13 recounts incidents of relatively severe harassment and stalking, mentions nothing about
14 participating in any lawsuit or even any public disclosure of her true name. The threat of the
15 harms Jessica Doe describes seems to be based on cheerleading rather than on litigation or
16 public identification (*see, e.g., id.* at 2 (“Some of my fellow cheerleaders experienced similar
17 treatment.”)). These declarations, taken together, fail to show that plaintiff would necessarily
18 endure severe harassment or stalking, or reasonably fears such harm, as a result of using her
19 true name in this lawsuit. The declarations likewise fail to show that plaintiff is vulnerable to
20 retaliation relative to, e.g., anyone else who might incur the wrath of loyal fans by suing the
21 NFL. In short, plaintiff has not shown that she has a strong need for anonymity here.

22 On the other hand, our courts belong to the people, and the public and press have a right
23 to look over our shoulders to see how their court system is being used. This consideration
24 counsels in favor of requiring true names of those who seek to sue others. *See Doe v.*
25 *Kamehameha Schs./Bernice Pauahi Bishop Estate*, 596 F.3d 1036, 1042–43 (9th Cir. 2010);
26 *Jessica K. by and through Brianna K. v. Eureka City Schs. Dist.*, No. C 13–05854 WHA, 2014
27 WL 689029, at *2 (N.D. Cal. Feb. 21, 2014); *Doe v. Texaco, Inc.*, No. C 06-02820 WHA, 2006
28 WL 2850035, at *6 (N.D. Cal. Oct. 5, 2006). This is particularly true where, as here, plaintiff

1 seeks to assert class damages claims for antitrust violations. Not only will the public have an
2 interest in understanding the antitrust issues in question, but class members will also have a
3 right to know the identity of their representative in this litigation (if the case goes that far).
4 These interests outweigh the showing made by plaintiff here.

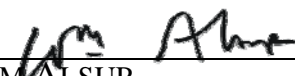
5 Plaintiff cites *Jane Roes 1-2 v. SFBSC Mgmt., LLC*, 77 F. Supp. 3d 990 (N.D. Cal. Jan.
6 12, 2015) (Judge Loral Beeler), a case involving exotic dancers, for the proposition that
7 “highly sensitive” situations involving “social stigmatization” or “sexuality” warrant anonymity
8 (*see* Dkt. No. 5 at 2). But *SFBSC* is distinguishable from our case. For example, in *SFBSC*,
9 both sides *agreed* that “public disclosure of an exotic dancer’s true identity presents substantial
10 risk of harm.” *Id.* at 992. Here, by contrast, plaintiff has not shown that public disclosure of
11 her identity presents substantial risk of harm. Moreover, the suggestion that exotic dancers and
12 professional cheerleaders share comparable risks of stigmatization, ridicule, or embarrassment
13 because the latter wear revealing uniforms is unpersuasive — particularly since the complaint
14 emphasizes that professional cheerleaders are skilled “female athletes” but does not mention
15 any sensitivity, stigmatization, or sexuality in the profession (*see* Dkt. No. 1).

16 CONCLUSION

17 For the foregoing reasons, plaintiff’s motion to proceed under a pseudonym is **DENIED**.
18 For purposes of testing the pleadings, however, and assuming that defendants will move to
19 dismiss under Federal Rule of Civil Procedure 12, the Court will allow plaintiff to use only her
20 true first and last initials in pleadings for the time being. If defendants choose to answer rather
21 than move under Rule 12, or if the complaint survives past the Rule 12 stage, then plaintiff will
22 likely be required to re-file her complaint using her true full name.

23
24 **IT IS SO ORDERED.**

25
26 Dated: February 22, 2017.

27 
28 WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE